

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NANCY ALLISON McCALL,

Defendant.

Cause No. CR 10-91-GF-BMM

ORDER DENYING MOTION TO
REDUCE SENTENCE

On April 23, 2014, the Court received from Defendant McCall a letter seeking a one-year reduction in her sentence on the grounds that she has completed the Residential Drug Abuse Prevention program and other programs that have given her insight into her criminal behavior.

A court's authority to reopen proceedings in a criminal case to alter the judgment is limited. 18 U.S.C. § 3582(c). The Director of the Bureau of Prisons has not filed a motion to reduce McCall's sentence. *Id.* § 3582(c)(1)(A). She has not shown that an applicable guideline has been lowered by the Sentencing Commission. *Id.* § 3582(c)(2). The conditions of Fed. R. Crim. P. 35(a) or (b) have not been met. McCall has already litigated her first motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255, Order (Doc. 40), so this Court lacks jurisdiction to entertain a second motion, *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). The Court is not aware of any other statutory authority that

would apply here to give the Court authority to reopen the proceedings in the criminal case on McCall's motion. 18 U.S.C. § 3582(c)(1)(B).

Pepper v. United States, __ U.S. __, 131 S. Ct. 1229 (2011), is not to the contrary. *Pepper* holds that “*when a defendant’s sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant’s postsentencing rehabilitation.*” 131 S. Ct. at 1236 (emphasis added). In other words, in *Pepper*, the criminal proceedings had not concluded. Here, they are closed. *Pepper* does not authorize their reopening.

While the Bureau of Prisons may have authority to reduce McCall's sentence, *see* 18 U.S.C. § 3621(e)(2)(B), the Court does not. The law does not permit the Court to change her sentence.

Accordingly, IT IS HEREBY ORDERED that McCall's motion to reduce her sentence (Doc. 43) is DENIED.

DATED this 25th day of April, 2014.

/s/ Brian M. Morris
Brian M. Morris
United States District Court